

Message Text

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USDOC FOR PATENT OFFICE

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TAGS: EIND, CO, VE, BL, EC, CI, PE

SUBJECT: ANDEAN PACT: PATENT AND TRADEMARKS, CERP/EAL

REF: LIMA A-232, 8/31/73

1. ON JUNE 5 COMMISSION ISSUED DECISION 85 ON PATENTS AND TRADEMARKS. TEXT IS SOMEWHAT LESS RESTRICTIVE THAN EARLIER JUNTA PROPOSAL PRESENTED IN DECEMBER 1971 WHICH COMMISSION DID NOT APPROVE BECAUSE OF OPPOSITION FROM ECUADOR. SEE REFAIR FOR BACKGROUND INFORMATION. TEXT OF DECISION BEING POUCHED TO OFFICE OF LEGISLATION AND INTERNATIONAL AFFAIRS, PATENT OFFICE, AS WELL AS TO BIC AND ARA/ECP.

2. CONTROVERSIAL REFERENCE IN ART. 1 IN ORIGINAL PROPOSAL THAT PATENTS CAN ONLY BE GRANTED IF THEY "CONTRIBUTE TO THE DEVELOPMENT OF THE MEMBER COUNTRIES" HAS NOT BEEN INCLUDED IN FINAL TEXT. HOWEVER, DISCRETIONARY PRIVILEGE IN GRANTING PATENTS HAS BEEN REINTRODUCED AS AN ITEM IN ART. 5.

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3. PATENTS CAN BE ISSUED FOR PHARMACEUTICAL PROCESSES.

LATTER WERE NOT PATENTABLE IN ORIGINAL PROPOSAL.

4. VENEZUELA HAD RECOMMENDED AT JULY 1973 EXPERTS MEETING THAT PATENTS OWNED BY FOREIGNERS BE TREATED DIFFERENTLY THAN THOSE OWNED BY NATIONALS. SUCH PROVISION IS NOT INCLUDED IN FINAL TEXT.

5. ORIGINAL PROPOSAL GAVE HOST GOVERNMENT THE RIGHT TO MAKE PATENTS IN FIELDS OF PUBLIC HEALTH OR NATIONAL DEVELOPMENT SUBJECT TO COMPULSORY LICENSE. THIS PROVISION DOES NOT APPEAR IN FINAL TEXT.

6. COLOMBIANS HAD INSISTED THAT USE OF FOREIGN TRADEMARKS BE PROHIBITED AFTER JANUARY 1, 1977. NO SUCH PROHIBITION CONTAINED IN TEXT OF DECISION.

7. FOLLOWING PROVISIONS IN DECISION 85 DESERVE SPECIAL ATTENTION. FIRST, FOREIGN INVENTIONS ARE NOT PATENTABLE UNLESS APPLICATION IS PRESENTED WITHIN ONE YEAR OF INITIAL REGISTRATION IN ANOTHER COUNTRY. SECONDLY, A PATENT DOES NOT CONFER THE EXCLUSIVE RIGHT TO IMPORT PRODUCTS FABRICATED IN ANOTHER COUNTRY UNDER THAT SAME PATENT. THIRD, IF A PATENT IS NOT EXPLOITED WITHIN THREE YEARS OF REGISTRATION, AN OBLIGATORY LICENSE CAN BE GRANTED UNDER CERTAIN CONDITIONS. IF PATENT IS NOT EXPLOITED WITHIN FIVE YEARS OF REGISTRATION, ANY INTERESTED PERSON HAS RIGHT TO BE GRANTED A LICENSE, REGARDLESS OF REASONS FOR PATENT HOLDER'S DELAY IN EXPLOITING IT. ADEQUATE COMPENSATION HAS TO BE PAID.

8. JUNTA LAWYER IS PREPARING DESCRIPTIVE ANALYSIS OF NEW PATENTS AND TRADEMARKS REGULATIONS, WHICH MAY BE AVAILABLE IN TWO WEEKS.
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